THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.11367 of 1998

Between:

Smt.Lakum Bai

.. Petitioner.

And

The Govt. of A.P., rep. by it's
Secretary, Home Department,
Secretariat, Hyderabad
and others. .. Respondents.

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.11367 of 1998

ORDER:

This Writ Petition is filed by the petitioner seeking a Writ of Mandamus directing the respondents to pay compensation to a sum of Rs.2,00,000/- to her for the death of her son namely P.Dharmu, who was lodged as under-trial prisoner in the District Jail, Asifabad, and who died in the jail on 11.09.1995.

2. Necessary facts, in brief, are as under:-

The petitioner is the mother of One P.Dharmu, who was a Tribe and permanent resident of Salegudem village, Adilabad District. The said Dharmu was accused in Crime Nos.12 of 1993 and 24 of 1993 for the alleged offence under Section 395 of the Indian Penal Code, on the file of Devapur Police Station of Mandamerri circle of Adilabad District. In connection with the above said crimes, the accused Dharmu was apprehended and produced before the learned Judicial Magistrate of First Class, Luxettipet, on 14.06.1995 and he was remanded to judicial custody and was lodged in District Jail, Asifabad. In the late evening hours of 11.09.1995, when the said accused complained of chest pain while he was in the District Jail, Asifabad, he was shifted to Government Hospital for treatment and at about 2140 hours, he was declared dead due to cardiac failure.

In the affidavit filed in support of the petition, it is stated that though the deceased was not involved in the said offences, he was wrongfully apprehended and was lodged in District Jail, Asifabad. It is stated that on 05.09.1995 and 09.09.1995 when the deceased Dharmu fell ill, no proper treatment was given to him. Further on 11.09.1995, he complained of chest pain and he was shifted to Government Hospital, Asifabad, but however, he was declared dead.

It is further the case of the petitioner that the said accused Dharmu died only due to negligence on the part of the jail authorities as they have not given proper treatment, though he fell ill on 05.09.1995 itself. As such, precisely, it is the case of the petitioner that the death of her son Dharmu is on account of the negligence of the third respondent jail authorities, as such, the State is vicariously responsible for payment of compensation to her in view of the death of her son due to negligence on the part of the jail authorities.

3. A counter affidavit is filed by the Superintendent, District Jail, Asifabad. In the said counter, it is stated that the under-trial prisoner Dharmu was admitted into the jail on 14.06.1993 in connection with Crime Nos.12 of 1993 and 24 of 1992 registered on the file of P.S.Devapur for the alleged offence under Section 395 IPC. It is further averred in the counter affidavit that on 05.09.1995, the under-trial prisoner Dharmu complained of fever and on the same day, he was sent to Government Hospital, Asifabad, where he was examined by the Medical Officer, who prescribed some medicines, and on the same day, he was returned to the jail. Again on 11.09.1995, Dharmu has complained of chest pain at about 9.25 p.m. and immediately he was shifted to the Government Hospital through jail guard at about

9.40 p.m., but however, he died at about 10.10 p.m. While denying the allegations of negligence, it is stated that in spite of proper care being taken by the jail authorities, the said Dharmu died in the Hospital while undergoing treatment due to 'Cardiac Failure'. While reiterating that the death of Dharmu is natural death, the respondents contend that as there was no negligence at all on their part, the petitioner is not entitled for any compensation.

4. In this writ petition, to consider the claim of the petitioner for grant of relief of compensation, the only question, which arises for consideration, is that, is there any negligence on the part of the respondents in attending to the health complaints of the deceased when he was in the District Jail of Asifabad District, as under-trial prisoner.

5. Precisely, the deceased was admitted to jail as early as on 14.06.1993 in connection with the remand order passed by the Judicial Magistrate of First Class, Luxettepet, in Cr.Nos.12 of 1993 and 24 of 1992 for the alleged offence under Section 395 IPC of Devapur Police Station of Mandammari circle, Adilabad District. On 05.09.1995, when the deceased Dharmu complained of fever, he was sent to Government Hospital, Asifabad, where he was examined by the Medical Officer and was treated as an out patient. Thereafter, it is stated that even on 11.09.1995, the deceased attended to the work in the kitchen and had his regular food, but however, when he has complained of chest pain on that day, at about 9.25 p.m., he was shifted to the Government Hospital through jail guard immediately at about 9.40 p.m, but, unfortunately, he died at about 10.10 p.m. due to cardiac problem. Consequent to the death of Dharmu, a case was also registered under Section 174 Cr.P.C. on the file of P.S. Asifabad, and

post-mortem and inquest was conducted. Even as per the post-mortem report, the cause of death was stated to be due to cardio respiratory failure. Though it is contended by the learned counsel for the petitioner Sri V.Ravi Kiran Rao that there was negligence on the part of the respondents in not admitting the petitioner in the Hospital on 05.09.1995 itself, but, however, it is to be seen that on 05.09.1995, the deceased Dharmu has complained of fever only and in connection with the said complaint, even on the said date i.e., on 05.09.1995, he was sent to Government Hospital, Asifabad, and after examination by the Medical Officer, he was treated as an out patient and was sent to jail on the same day. Even on 11.09.1995, after his complaint of chest pain at about 9.25 p.m., it is stated that he was immediately shifted to Government Hospital at about 9.40 p.m. and shortly thereafter he was declared dead by the Medical Officer. Merely because he was not admitted to Hospital on 05.09.1995, it cannot be said that there is any negligence on the part of the respondents. On 05.09.1995, the deceased Dharmu complained of fever and ultimately he died on 11.09.1995 due to cardiac respiratory failure. Even on the said date i.e., on 11.09.1995, as soon as the deceased complained of chest pain, immediately, he was admitted to Hospital, and as he died while undergoing treatment in the Hospital itself, it cannot be said that the deceased died only due to negligence on the part of the respondents. In any event, this is a petition filed under Section 226 of the Constitution of India. From the averments in the counter affidavit, it is clear that the jail authorities have taken immediate steps on the health complaints of the deceased. In that view of the matter and also in absence of any clear evidence of negligence on the part of the respondents to record a finding of negligence on their part and award compensation to the petitioner, who is the mother of the deceased, it is

not possible to accept the contention of the petitioner that the deceased died due to the negligence of the respondent jail authorities. Though it is stated that the petitioner is a Tribe and her son Dharmu died while he was in Jail as under-trial prisoner, but in view of the legal restraint, it is not possible to extend any assistance to the petitioner, who is the mother of the deceased, to consider her case for grant of relief to her as prayed for.

For the aforementioned reasons, the writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

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(R.SUBHASH REDDY,J)

Dt.04.06.2007

v v